

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 27 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHENIBEN W/OF MOTIRAM MORARJI

Versus

AMBARAM MORARJI

Appearance:

MR DD VYAS for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/05/98

ORAL JUDGEMENT

The respondent has been served but he is absent. He has not engaged any counsel. In these circumstances, the learned counsel for the appellant has been heard and record has been perused.

2. The brief facts essential for disposal of this appeal are as under.

The present appellant filed the suit in the Rent Court for recovery of arrears of rent, mesne profits and recovery of possession by eviction of the defendant-respondent from the ground floor portion of the premises in dispute, on the ground of inconsistent user of the demised premises in contravention of the terms of the lease. It appears that the defendant-respondent committed trespass over the first floor portion of the premises of which he is not tenant.

3. The suit was resisted by the respondent. The trial court after considering the evidence on record found that the respondent used the ground floor portion contrary to the purpose for which it was let out. Accordingly, decree for eviction, recovery of arrears of rent and mesne profits in respect of ground floor portion was passed. In addition to this, the trial court also granted decree for eviction in respect of first floor portion of the premises.

4. The respondent preferred an appeal before the Lower Appellate Court. The Lower Appellate Court confirmed the decree of the trial court in respect of ground floor portion, but, in respect of first floor portion, it was observed that since the respondent committed trespass on the first floor portion, the remedy of the appellant did not lie before the Rent Court and the suit for this portion should have been filed on the regular side. It is, therefore, this Second Appeal.

5. The following substantial question of law was formulated in this appeal.

"Whether on the facts and in the circumstances of the case, the trial court which admittedly had the powers to try a suit under the Bombay Rent Act as well as under the ordinary law, had jurisdiction to pass a decree for possession in respect of the first floor including loft even on the basis that the defendant was either a licensee or a trespasser with respect to the said portion of the suit premises."

6. Having heard the learned counsel for the appellant on the above substantial question and examining the judgments of the two courts below and the material on record, I do not find any ground or cogent reasons for interfering with the findings and the judgments and decree of the two courts below regarding the ground floor portion.

7. So far as the first floor portion of the premises is concerned, the trial court granted decree for possession on the ground that the defendant has also not acted as a prudent lessee in taking over the possession of first floor of the suit premises occupying it without the permission of the plaintiff. The trial court further observed that thus the plaintiff becomes entitled to recover possession of the suit premises from the defendant under Section 13(1) of the Bombay Rent Control Act. Beyond this nothing was observed by the trial court. The Lower Appellate Court, on the contrary, found that the defendant-respondent committed trespass over the first floor portion of the suit premises. The Lower Appellate Court was of the view that decree for possession against trespasser cannot be granted by the Rent Court. This observation does not seem to be based on pleadings and material on record still if this view of the lower court is reversed even then the decree of the trial court for first floor cannot be restored in this Second Appeal. In my view, the observation of the Lower Appellate Court that the respondent committed trespass over the first floor portion of the suit premises requires reversal and the ends of justice will be satisfied if observation is made in this Second Appeal that the defendant-respondent is not tenant of the first floor portion. In view of this observation whatever legal remedy is available to the appellant in respect of first floor portion can be availed by him in accordance with law.

8. With the above observation, the appeal is dismissed. No order as to costs.

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